under such circumstances is whether the expression "the meadow" was used as indicative of the scope of the easement, or whether it indicated and marked out the dominant estate. It would appear then that in the principal case the constant use of the words "church lot" in the deed of conveyance, together with the reasons in the dissenting opinion, would make it reasonable to conclude that the building restriction was for the benefit of the church lot only as such.

EVIDENCE—ADMISSIBILITY OF MEMORANDUM.—The date of the occurence of a certain fire was in dispute, plaintiff contending that it took place on June 13, while defendant company claimed June 20 as the correct date. To maintain its version defendant introduced as a witness one of its telegraph operators who testified that he kept a record of the telegrams sent by him to the defendant; that he had no independent recollection as to the date of the fire referred to in a certain telegram; that notwithstanding his reference to the record he had no independent recollection, but that he could state the date because he knew it was in the record, and knew of his own knowledge that the telegrams were inserted in the record on the date under which they were entered. After this preliminary evidence the entire telegram, dated June 20, and containing other statements damaging to plaintiff's contention, was admitted in evidence. *Held,* that this admission in evidence of the entire telegram was erroneous. *Salo* v. *Duluth & I. R. R. Co.* (Minn. 1913), 140 N. W. 188.

Justice BROWN, in commenting on the trial court's view, made the following remarks: "The effect of the ruling under consideration was to place before the jury not only the date of the telegram, but also a statement in writing, made by the witness, the defendant's agent, of certain details of the crucial fact in issue, and purporting, moreover, to have been made before the litigation was commenced and in the absence of the plaintiff, and all this under the guise of showing the date of the transaction recorded. We cannot sustain such an application of the rule, whatever the true rule may be deemed to be." On this subject generally, and with particular reference to recorded past recollections, see *Shove* v. *Wiley,* 18 Pick. 558; *Acklen's Executors* v. *Hickman,* 63 Ala. 494; *Davis* v. *Field,* 56 Vt. 426; WIGMORE, EVIDENCE, §§ 734 et seq. In *Wright* v. *Wright,* 58 Kan. 525, the following is said: "The rule of many of the older cases was that a witness might refresh his memory, as to forgotten matter about which he was called upon to testify, by reference to a memorandum of the same made at the time or very soon thereafter; having done which, he might then testify; but in such case his testimony must be from memory and not from the memorandum. The liberalizing tendency of the courts has now enlarged the rule so as to include cases where the witness is still unable to testify from memory, after an examination of the memorandum but is able to identify such memorandum as made by himself, at or near the time of the transaction to which it relates, for the purpose of preserving a true account of it, and that he knows it to have been truly and correctly made. In such cases, he may give the contents of the memorandum as his own evidence." The instant case emphasizes the

fact that the court will not permit the want of independent recollection to serve as an avenue for the admission of incompetent evidence.

INFANTS—RIGHT OF ACTION FOR INJURY TO UNBORN CHILD.—The plaintiff sued for injuries received 36 days before his birth, through the negligent starting of defendant's car while plaintiff's mother, who was a passenger on said car, was alighting therefrom. It was alleged that the injuries resulted in the plaintiff's being born with a deformity, and with a less than normal nervous and physical condition. *Held,* the plaintiff has no right of action for the said injuries. *Nugent* v. *Brooklyn Heights R. Co.* (1913), 139 N. Y. Supp. 367.

The decision in the principal case is based on the proposition that the relation of carrier and passenger did not exist between the defendant company and the plaintiff *en ventre sa mere,* and therefore that the defendant owed the plaintiff no duty which had been violated. The case of *Walker* v. *Great Northern Ry. Co.,* 28 L. R. (Ir. 1890) 69, which was relied upon in the principal case, refused a recovery under similar circumstances, likewise on the ground that no relation of passenger and carrier existed between the parties. In *Allaire* v. *St. Luke's Hospital,* 184 Ill. 359, 56 N. E. 638, 48 L. R. A. 225, 75 Am. St. Rep. 176, recovery was also refused, but on the ground that the child had no legal existence apart from its mother. (But see the strong dissenting opinion of Mr. Justice BOGGS.) That same conclusion, that the unborn child has no legal existence apart from its mother, was reached in *Dietrich* v. *Northampton,* 138 Mass. 14, 52 Am. Rep. 242. See also *Gorman* v. *Budlong,* 23 R. I. 169, 49 Atl. 704, 55 L. R. A. 118. It is admitted, however, that a child *en ventre sa mere* has a legal existence for many purposes. 1 BLACK., COMM. 130; *The George & Richard,* L. R. 3 Adm. & Ecc. 466; *Nelson* v. *G., H. & S. A. Ry. Co.,* 78 Tex. 621, 11 L. R. A. 391, 14 S. W. 1021; 4 COOLEY'S BLACK., COMM., 197; *Phillips* v. *Herron,* 55 Oh. St. 478, 45 N. E. 720; *Turley* v. *Turley,* 11 Oh. St. 173; *McArthur* v. *Scott,* 113 U. S. 340, 28 L. Ed. 1015, 5 Sup. Ct. 652. The principal case admits that the unborn child was an entity, and that it was not a trespasser, but says the defendant owed it no duty because it was not a passenger. It seems to be still an open question, therefore, whether such an action could be maintained if it did not depend upon the existence of such a relation. For a note on this general subject, see 1 MICH. L. REV. 138.

INSURANCE—APPORTIONMENT AMONG COMPOUND AND SPECIFIC POLICIES.—An owner of a double house held two compound policies insuring the entire house; also one specific policy insuring each part separately. Each policy provided: "If there shall be other insurance * * * the insured shall recover on this policy no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon." *Held,* to determine the total insurance on each part of the house, each compound policy should be apportioned between the two parts in proportion to the value of the parts and the result added to the specific policy on that part. *Taber* v. *Continental Insurance Co.,* (Mass. 1913), 100 N. E. 636.

At least three distinct rules, each more or less arbitrary, have been ap-